

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

-----  
ePLUS, INC. : Civil Action No.  
vs. : 3:09CV620  
LAWSON SOFTWARE, INC. : September 3, 2010  
-----

COMPLETE TRANSCRIPT OF THE CONFERENCE ALL  
BEFORE THE HONORABLE ROBERT E. PAYNE  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

Scott L. Robertson, Esquire  
Michael G. Strapp, Esquire  
Jennifer A. Albert, Esquire  
Goodwin Procter, LLP  
901 New York Avenue NW  
Suite 900  
Washington, D.C. 20001

Henry I. Willett, III, Esquire  
Christian & Barton, LLP  
909 East Main Street  
Suite 1200  
Richmond, Virginia 23219-3095  
Counsel for the plaintiff

Peppy Peterson, RPR  
Official Court Reporter  
United States District Court

1 APPEARANCES: (cont'g)

2 Dabney J. Carr, IV, Esquire  
3 Troutman Sanders, LLP  
4 1001 Haxall Point  
5 Richmond, Virginia 23219

6 Daniel W. McDonald, Esquire  
7 Kirstin L. Stoll-DeBell, Esquire  
8 Merchant & Gould, PC  
9 80 South Eighth Street  
10 Suite 3200  
11 Minneapolis, Minnesota 55402  
12 Counsel for the defendant  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1                                    P R O C E E D I N G S

2

3                    THE COURT:    Hello.

4                    MR. WILLETT:   Hello, Judge Payne.   You have you have  
5   Henry Willett, Scott Robertson, Jennifer Albert, and Michael  
6   Strapp on the line for ePlus.

7                    MR. CARR:   And, Judge, this is Dabney Carr.   For  
8   Lawson Software you have myself, Dan McDonald, and Kirstin  
9   Stoll-DeBell.

10                   THE COURT:   Okay.   Sorry to be adjusting your  
11   schedules the way it is.   This criminal case is going on, and  
12   it may even go over until Tuesday.   I don't know yet.   I've got  
13   these motions that I told you I'm going to hear on Tuesday.  
14   That's my current plan.   If this jury wants to deliberate on  
15   Tuesday instead of tonight, then they will get the 7th and I'll  
16   hear you all on the 8th.

17                   You all have loaded me down with so many things here  
18   that need to be resolved, plus the pretrial order, I don't see  
19   how we can start on the 13th.   So I think I'll right now  
20   schedule the pretrial conference on the 13th and plan to start  
21   the trial on the 20th.   If that doesn't suit you all, I have  
22   some time that's just opened up in October if you'd rather do  
23   that.   Tell me what you think about.

24                   MR. McDONALD:   Your Honor, this is Dan McDonald for  
25   Lawson.   Obviously we'll double-check with all our witnesses,

1 but I'm confident that starting on the 20th is going to be a  
2 lot better for us than trying to start in October.

3 THE COURT: It would be better for me, too, but I  
4 need to come to terms with some of these things, and they  
5 affect what's going on, going to be going on in the case, and  
6 then I think that some of these rulings may help resolve and  
7 sort out some of what you are doing, going to get done in the  
8 final pretrial conference, but that's what we'll -- that's the  
9 schedule we'll follow unless, Mr. Robertson, do you have a  
10 problem doing this?

11 MR. ROBERTSON: No, Your Honor. Let me -- I would  
12 like to be able to check -- I mean, for example, I have some  
13 witnesses like Dr. Weaver is an academic, and he set aside time  
14 in his teaching schedule, and I just don't know what the week  
15 of the 20th looks like.

16 Does Your Honor have any idea what the timing in  
17 October would look like if I had to inquire and see what's  
18 better? We have some other witnesses, too, that schedules are  
19 implicated. I understand the WiAV case settled, and I think  
20 that, based on conversations with Judge Dohnal, is the slot  
21 Your Honor was referencing.

22 THE COURT: Well, that's an October place, yes. It  
23 was set to start on October 11th, I think it was. Let me look.

24 MR. WILLETT: Judge, I believe we were going to do  
25 the jury selection on the 14th.

1 THE COURT: Okay. I was looking, on the 14th and  
2 then start the trial on the 18th; is that right?

3 MR. WILLETT: That's correct, Your Honor. I know you  
4 had -- we were going to run into half a day on October 21st,  
5 resuming in the morning on October 25th.

6 THE COURT: Yeah, that's right. And I still have  
7 saved that time. I haven't done anything with it because of  
8 the problems I'm having with this criminal case and you all, so  
9 those are the alternats, start on the 20th September or start  
10 on the 14th or -- or the 18th of October, and in both  
11 instances, we probably could pick a jury on the afternoon of  
12 September 17th and start right off on the morning of the 20th.

13 We could still do the jury on the 14th if you all  
14 chose that, so why don't you all talk, and you need to get back  
15 together and let me know. Now, I need to know how to get ahold  
16 of you all -- I'm not going to know until after six o'clock or  
17 so what this jury wants to do about deliberating this evening  
18 or Tuesday morning, so I need to know how to get hold of  
19 somebody to pass the word whether you're going to be on the 7th  
20 or on the 8th. Give Ms. Haggard your telephone numbers where  
21 we can reach you, e-mail or whatever. You have to tell us.  
22 Mr. Willett.

23 MR. WILLETT: Judge, this is Henry Henrico Willett.  
24 I'll give Ms. Haggard my cell phone number, and I can reach out  
25 to everyone.

1 THE COURT: All right. Why don't you do that. Don't  
2 record his cell phone number.

3 MR. WILLETT: Thank you. It's [REDACTED].

4 THE COURT: She'll be in touch with you as soon as I  
5 know.

6 MR. WILLETT: I'll e-mail you and everyone, Dabney.

7 THE COURT: Then you all be prepared to talk when we  
8 get together about what you want to do on the trial date.

9 You all haven't resolved any of these motions have  
10 you?

11 (No response.)

12 THE COURT: Okay. Thank you. I will tell you what I  
13 want you to focus on. I think Lawson has got some real  
14 troubles in having its damage expert testify because of the  
15 ruling on the IBM case, and once that's gone, then he's got the  
16 same basic problem that Mangum had, I think.

17 I think that conceptually it's very hard to rule that  
18 ePlus can't use other evidence of damages, but in what I'm able  
19 to see, that is you can't rule in general that you can't try  
20 damages another way than the expert report. That basic concept  
21 isn't valid, but I will tell you, I don't see a lot of evidence  
22 in the disclosures or interrogatories that you all did anything  
23 but disclose Mangum, and I'm going to be looking at them, but  
24 what I've seen so far, it looks to me like it's problem.

25 That means we're not going to have any damage case,

so that may affect how long we're going to do anyway. It would be a case involving an injunction, so I don't know what we're going to do, but those are the things I need to have you focus on at this argument. So you all can be thinking about that.

And the first one that files off a supplemental brief and sticks it in here is going -- I'm just going to rule against you as a penalty stroke, because I can't take any more. The forests need to be saved. All right. See you all later. Thank you very much for being available, and I'm sorry to put the call off beyond where I had originally planned it.

(End of proceedings.)

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

---

P. E. Peterson, RPR

Date \_\_\_\_\_